IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO.234 OF 2005

Mr. Otto Jorge More Salazar,
Presently lodged in Judicial
Lockup, Sub-Jail Sada Vasco,
Vasco Da Gama-Goa. ... Applicant

versus

State of Goa,
Represented by officer in charge,
ANC Police Station,
Police Head Quarters,
Panaji Goa,
Through Public Prosecutor. ... Respondents

Mr. M. P. Amonkar, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 5TH DECEMBER, 2005.

ORAL ORDER

Heard Mr. M. P. Amonkar, the learned Counsel on behalf of the accused and Ms. W. Coutinho, the learned Public Prosecutor on behalf of the respondent.

2. The allegation against the accused is that he was found in possession of 1gm. of Cocaine and 900 gms. of charas at Anjuna on 4-12-2004. A charge-sheet has been filed against the said accused under Section 29(b)(ii) and Section 21 of the N.D.P.S. Act, 1985. The learned Special Judge by her Order dated 21-2-2005 has rejected the application for bail filed on behalf of the accused inter alia observing that 900 gms. of charas is a variable quantity which could entail punishment of rigorous imprisonment upto 10 years and fine which could be extended upto Rs.1,00,000/- if held guilty during the course of the trial. The learned Special Judge also observed that the records showed that the accused did not possess any passport and was overstaying in India and moving about without any lawful papers and on that count also the learned Special Judge rejected the application.

3. It appears that the accused was prosecuted in C.C. No.95/S/05/F before the learned J.M.F.C., Mapusa under Section 3(2)(A) of the Passport(entry into India) Act, 1920 punishable under Section 14 of the Foreigners Act 1946 and though the accused was initially convicted by Order dated

14-3-2005, the said Order has been set aside by the learned Additional Sessions Judge vide her Order dated 3-10-2005 in Criminal Appeal No.28/2005.

4. Mr. Amonkar on behalf of the accused submits that although the accused did not have a passport, the accused was issued in the absence of the passport travel documents by the Consulate of Costa Rica, Mumbai which are seized by the Police. Mr. Amonkar further submits that 1 gm. of Cocane is less than the quantity meant for personal consumption and 900 gms. of charas is less than commercial quantity and, therefore, there could be no prohibition in admitting the accused on bail.

5. On the other hand, it has been submitted by the learned Public Prosecutor Ms. Coutinho that the accused is a foreigner and there is every possibility that in case the accused is admitted to bail he will jump the bail.

6. The case of the accused is certainly not covered by Section 37 of the N.D.P.S. Act and, therefore, there is no question of adopting a negative attitude towards the grant of bail to the accused. Only because the accused is a foreigner, that cannot be

itself a ground to reject the application for bail by the accused. It has been submitted by Ms. Coutinho that the accused be not admitted to bail but instead the trial against the accused be ordered to be expedited. This submission cannot be accepted for the simple reason that one does not know as to how many cases are presently pending before the N.D.P.S. Court, Mapusa.

7. In my view, considering the facts of the case, the accused could be admitted to bail with the following conditions:-

1. The accused shall execute a bond of Rs.1,00,000/- with one surety in the like amount to the satisfaction of the learned Special Judge, N.D.P.S., Court, Mapusa.

2. The Investigation Officer shall retain the travel documents which were seized from the possession of the accused and which were issued to the accused in lieu of the passport, until the trial is completed.

3. The accused shall report to the Investigation Officer once in a forthnight.

The Bail Bonds to be executed to the satisfaction of the learned Special Judge, N.D.P.S., Court, Mapusa.

N. A. BRITTO, J.

RD.